IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

HERIBERTO SOTO,) CASE NO. 4:08 CV 2919
Petitioner,)
v.)) JUDGE DONALD C. NUGENT
) Magistrate Judge David S. Perelman
J.T. SHARTLE, WARDEN, et al.,) <u>MEMORANDUM OPINION</u>
Respondent.	,)

This matter is before the Court upon the Report and Recommendation of Magistrate

Judge David S. Perelman. (Docket #10.) The Magistrate Judge recommends that the action
be dismissed as moot.

Procedural History

As set forth by the Magistrate Judge, the procedural history of this case is as follows:

When this action in habeas corpus pursuant to 28 U.S.C. §2241 was initiated on December 15, 2008 the pro se petitioner was confined at the Federal Correctional Facility at Elkton, Ohio. The relief sought in the petition was petitioner's immediate release from custody, on the basis that his continuing confinement "stems from credits the state authorities arbitrarily and capriciously failed to administer toward his confinement. The adverse effect of the missing credit has caused the Petitioner to serve longer sentence than what the state court and federal court imposed."

On May 26, 2009 respondent filed an "Answer And Return In

Opposition To Petition For Writ Of Habeas Corpus And Motion To Dismiss Or, In The Alternative, Motion For Summary Judgment" (Doc. #9). The certificate of service reflects that a copy of this pleading was forwarded to the petitioner by regular mail at his current place of personal residence.

Petitioner has failed to respond to the motion, which could be deemed as a tacit acquiescence and serve as a basis for granting the motion.

More importantly, while the motion advances a variety of arguments for dismissal of the petition, the most cogent is that the matter is moot. A declaration of Vanessa H. Smith, a Supervising Paralegal employed by the United States Department of Justice, Federal Bureau of Prisons, Northeast Regional Office (Motion Exhibit 1) states that "on May 13, 2009, petitioner was released from custody via good conduct time release from the Federal Correctional Institution in Elkton, Ohio." This representation is confirmed by documentation appended to the declaration.

Report and Recommendation dated August 12, 2009 (Docket #10).

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is

filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings."

Conclusion

The Magistrate Judge recommends that this action be dismissed as moot. No objections were filed to the Report and Recommendation.

This Court has reviewed the Magistrate Judge's Report and Recommendation. After careful evaluation of the record, this Court finds that Magistrate Judge Perelman properly recommended that the case be dismissed as moot. Accordingly, the Report and Recommendation of Magistrate Judge Perelman(Document # 14) is hereby ADOPTED and the instant matter is hereby DISMISSED.

IT IS SO ORDERED.

DONALD C. NUGENT

United States District Judge

DATED: Systember 11, 2009